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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,590	01/27/2004	Wataru Domon	U2054.0149	1693

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EXAMINER

PEACHES, RANDY

ART UNIT	PAPER NUMBER
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2617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/764,590

Applicant(s)

DOMON ET AL.

Examiner

Randy Peaches

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :10 and 20/1-27-2004 and 6-5-2006.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. ***Claims 1-13 and 14-26*** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Independent ***claims 56 and 57***, provides evidence that the method claims associated with these claims are disembodied algorithms. The Applicant is respectfully reminded that the claimed invention must:

- be a Practical Application by Physical Transformation
- Practical Application that Produces a Useful, Tangible and Concrete Result
- Preempt an Abstract Idea, Law of Nature or Natural Phenomenon

of which, at their current stage, renders claims 1-13 and 14-26 as non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. ***Claims 7-8, 20-21, 33-34 and 47-48*** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The Applicant claims, "of **this** quality". The Examiner is unclear as to what is "this".

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3. **Claims 12-13, 25-26, 39-40 and 53-54** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims 12-13 teaches of the feature **"the number of times a channel switch was judged to be made due to interference"**. Consequently, it is not clear, because there is not reference to **"channel switch"** in the foregoing portion of claims. Further, the meaning of the phrase **"the number of times the channel was decided"** is not clear since a skilled person could not know what the number of times the channel was selected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-11, 14-24, 27-38, 41-52 and 55-57** are rejected under 35 U.S.C. 102(e) as being anticipated by Cervello et al. (Patent Corporation Treaty PCT/EP01/10178).

Regarding **claims 1, 14, 27, 41 and 55-57**, Cervello et al. discloses of a method and system for dynamically selecting channels between access points and communicating

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terminals, which reads on claimed "adapted to decide a channel to be employed for communication out of a plurality of radio frequency channels, and to cause communication to be made between one radio station and the other radio station," out of a set of channels (see page 2 lines 8-10), the method comprising:

- a first step of making decision of said channel at a contention free period (CFP)(see page 6 lines 25-27), which reads on claimed "certain timing," in said one radio station. See page 2 lines 12-14 and page 7 lines 6-11; and
- a second step of notifying information relating to this decided channel to said other radio station. See page 10 lines 14-23.

Regarding **claims 2, 15, 28 and 42**, according to **claims 1, 14, 27 and 41**, Cervello et al. continues to disclose said timing is a timing based on a predetermined constant period or a timing based on a variable period. Cervello et al. discloses on page 6 lines 25-27 wherein the said access point measures channel conditions during contention free periods, which is a constant period.

Regarding **claims 3, 16, 29 and 43**, according to **claims 1, 14, 27 and 41**, Cervello et al. continues to disclose wherein decision of said channel is adapted to be made at random from among a plurality of the channels. See page 5 lines 13-22.

Regarding **claims 4, 17, 30 and 44**, according to **claims 1, 14, 27 and 41**, Cervello et al. continues to disclose wherein:

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- a third step of acquiring information indicating each communication quality of said plurality of said channels to store it (see page 5 lines 20-33); and
- decision of the channel in said first step is adapted to be made based on said quality. See page 2 lines 15-16 and page 7 lines 31-34).

Regarding **claims 5, 18, 31 and 45**, according to **claims 1, 14, 27 and 41**, Cervello et al. continues to disclose wherein:

- a third step of storing information indicating each communication quality of said plurality of said channels, and information indicating an acquisition time of each quality thereof. See page 5 lines 25-34 and page 6 lines 1-15); and
- decision of the channel in said first step is adapted to be made based on at least one of each quality of said plurality of said channels, and this acquisition time of quality information. See page 2 lines 15-16.

Regarding **claims 6, 19, 32 and 46**, according to **claims 1, 14, 27 and 41**, Cervello et al. continues to disclose wherein the channel having less interference is decided in said first step. See page 10 lines 5-12.

Regarding **claims 7-9, 20-22, 33-34 and 47-48, 50, 52**, according to **claims 5, 18, 31, and 45**, Cervello et al. continues to disclose wherein the channel having the oldest acquisition time of this quality is decided in said first step. See page 7 lines 14-15. In addition, the Examiner would like to further stated that it is inherent that the said system

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will choose the oldest channel out of the set of channel to determine if the quality of the said channel is within tolerance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Peaches whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randy Peaches
March 30, 2007
RP


CHARLES N. APIAH
SUPERVISORY PATENT EXAMINER